IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL WRIT No. 6874 of 2006

TUGNA RAM
V/S
DANA RAM & ORS.

Mr. SG OJHA, for the appellant / petitioner

Mr. BL CHOUDHARY for Mr. JR BENIWAL, for the respondent

Date of Order : 29.5.2007

HON'BLE SHRI N P GUPTA,J.

ORDER

Heard learned counsel for the petitioner.

The matter comes up on the application for early listing of the case for admission. However, in view of the fact that the petitioner's election has been set aside vide Annexure-6 way back on 24.11.2006, still by virtue of interim order of this Court dt. 1.12.2006 the petitioner is continuing, at the request of both the counsel for the parties, the matter has been heard for admission today itself.

The petitioner was elected as Sarpanch on 4.2.2005. That election has been challenged by filing election petition on 26.2.2005 on the ground that the petitioner is having alive fourth child born after 27.11.1995, the cut off date, being Shyamlal, inasmuch as the petitioner have four children being Madanlal, Sunder,

Maggi @ Manisha and Shyam Sunder. According to the election petition this Shyam was born on 5.4.1997.

The petition was contested on the ground, mainly, that no fourth issue was born in 1997. Madanlal was born in 1991, Manisha in 1992, Sunder in 1993, and Shyamlal in 1994, and thus no further issue was born after 27.11.1995.

A rejoinder was filed, and the learned trial court recorded oral evidence of the parties, so also received documentary evidence, and deciding issue no. 1, being the only crucial issue.

After considering the material on record the learned trial court found, that from the documents Ex.-1, 2, 3, and 4, which have been admitted by the present petitioner before the Court, it is established, that fourth child was born in 1997, i.e. after 27.11.1995, and thus he was found to be disqualified to contest the election, and consequently the election has been set aside. At the same time it has also been found, that the petitioner has deliberately given false declaration on facts, in order to secure gain for himself, and cause loss to others, rather even before the Court he has filed wrong affidavits, and therefore, it was found that it would be in the interest of justice to register criminal case against him as well. Accordingly in the operative part the election was set aside, and steps were directed to be taken for registering criminal case against the petitioner.

Arguing the writ petition, learned counsel read to me the findings of the learned trial court. However, in view of the fact that contents of various documents being Ex. 1, 2, 3, and 4 have been admitted by the petitioner, while in the witness box, nothing much could be said qua the findings. Copies of the documents have been produced by the respondent inasmuch as copy of Ex.-1 has been produced as Annexure R/1, which shows that Maggi was born on 1.1.1995, and admittedly Shyam Sunder is born after Maggi. Then copy of Ex.-3 has been produced as Annexure R-1/2. This is an application for preparation of ration card submitted by the petitioner in the year 2001, and therein the age of Shyamlal is described as four years, and Ex.-4 has been produced as Annexure R 1/3 being certificate to the effect that ration card was in the Gram Panchayat Rooplisar in 2001. In rejoinder of course, the petitioner has produced certificate of the school showing Madanlal to have been born in 1991, Manisha to have been born on 2.5.1992, Sunder to have born on 24,7.93, and Shyamlal to have born on 13.4.1994. But then, it is not shown that these documents were produced before the learned trial court apart from the fact that these certificates do not bear any date, as to when they were issued, and therefore, these documents neither can be considered, nor do inspire confidence.

Then, so far Annexure-11, produced by the petitioner is concerned, that appears to be some report

given on some complaint. Suffice it to say that when the election petition was pending, such complaint, or any conclusion arrived thereon, can hardly help the petitioner. Apart from the fact that this report purports to be dated 7.10.2006, and admittedly it has not been produced before the learned court below.

In this background, I have considered the evidence led on the side of the petitioner, certified copies of which statements have also been produced on record, and after going through the evidence, I am at one with the findings recorded by the learned trial court about the fourth issue having born after 27.11.1995.

So far the order of criminal prosecution of the petitioner is concerned, in the operative part of the impugned order it has been directed that proceedings be taken for registering criminal case against the present petitioner. In my view, obviously this would be done after complying with the provisions of Section 340 Cr.P.C.

Thus, the writ petition has no force, and is dismissed summarily.

(N P GUPTA),J.

/Sushil/